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AUG 02 2002

ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

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DAVID V. MARVENTANO, STAFF DIRECTOR

July 26, 2002

The Honorable Henry Waxman
2204 Rayburn Office Building
Washington DC 20515

The Honorable Anna Eshoo
205 Cannon Office Building
Washington DC 20515

The Honorable Lois Capps
1118 Longworth Office Building
Washington DC 20515

The Honorable Jane Harman
229 Cannon Office Building
Washington DC 20515

Dear Representatives Waxman, Eshoo, Capps and Harman:

Thank you for your letter of May 8, 2002, requesting that the Committee on Energy & Commerce initiate an investigation of the business conduct and pricing practices of the Enron Corporation in California and the West during 2000 and 2001. I am pleased to inform you that the Committee is, and has been for several years, actively investigating the California energy crisis, including the numerous factors giving rise to high electricity prices, the structure of California and the region's wholesale electricity markets, the behavior of market participants, including Enron, the role of Federal and State government in protecting consumers and overseeing electric power markets, and the effect of the Enron collapse on energy supplies and prices. Likewise the Committee is also considering legislative reforms to ensure that electricity customers nationwide are protected from similar price spikes and blackouts in the future.

As part of our bipartisan examination of California and Western power markets, the Committee has been and is investigating specific wholesale power transactions, including those of the Enron Corporation and other participants in the California electricity market, both private

companies and public entities. In addition, the Committee is thoroughly investigating Enron's business practices in California, the West and nationwide, as well as overseeing and ensuring that the Federal Energy Regulatory Commission (FERC) and other Federal agencies pursue their investigations to the full extent of their authority.

Our record of investigation and the ensuing hearings in the Energy & Commerce Committee in the Enron debacle has been exhaustive, involving thousands of staff hours and encompassing no less than seven days of hearings at which witnesses were called by mutual agreement of the majority and minority. Those hearings covered numerous topics and were held on January 24, February 5, February 6, February 7, February 13, February 14 and March 14 of this year. Given the interest shown at most of these hearings many Members not on the relevant Energy & Commerce subcommittees also participated.

Our record of investigation has not ended with Enron. Over the last few months many of us have been concerned about the revelations about potential market manipulation and the practice of round trip trading. The Enron memoranda you reference in your letter and the trading practices they describe are indeed troubling. Understanding the circumstances and regulatory structures that gave rise to the power shortages and price spikes of 2000 and 2001, as well as the behavior of specific market participants, is critical to preventing similar occurrences in the future. That is why, in addition to the numerous hearings and investigative activities outlined above, the Committee on May 24, 2002, requested FERC provide specific information regarding the status of their numerous investigations into electricity markets in that region. Following up on the May 24th letter, the Committee also asked FERC on June 7, 2002, for all data relating to sellers of wholesale electricity and/or ancillary services in the United States portion of the Western Systems Coordinating Council during the years 2000-2001 (see attached letters). In response to our requests, FERC has provided thousands of documents to the Committee which are being reviewed by both majority and minority staff.

In addition, on November 16, 2001, the Committee wrote to Governor Davis to inquire into alleged conflict of interest concerns raised with respect to many of the Governor's advisors, who negotiated the State's long-term energy contracts, that may have resulted in California taxpayers paying higher electricity prices. As you may know, the Governor's response was less than forthcoming, requiring us to send another letter on March 12, 2002, requesting that he provide all of the requested information. Ultimately, after repeated requests, the Governor and state agencies provided written responses and numerous boxes of documents. By that time, the State had begun efforts to renegotiate these contracts, as well as filing a complaint with FERC alleging that the terms and conditions of some of the contracts were unjust and unreasonable, and some sellers had unlawfully exercised market power.

As part of its investigation into this matter, Committee staff reviewed a Davis Administration confidential report that made findings on the conflicts of interest concerns with respect to the consultants hired by Governor Davis to negotiate the power contracts. As you know, many of the Governor's advisors did have conflicts of interest with many of the power companies selling electricity to the State. Indeed, the Davis Administration fired five energy advisors for conflicts of interest because these advisors were involved in buying electricity for the State from a generator whose stock they owned.

July 26, 2002

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While the Oversight and Investigations Subcommittee and staff have been diligently working on the many issues outlined above, the Subcommittee on Energy and Air Quality has also been looking into market issues in the Western region for some time. Beginning with a field hearing in San Diego on September 11, 2000, the Subcommittee on Energy and Air Quality (at that time "Energy and Power") conducted numerous hearings to investigate the electric supply and pricing problems occurring in California. On February 15, 2001, the Subcommittee on Energy and Air Quality held a hearing entitled "Electricity Markets: Lessons Learned From California," in which we heard testimony from California utility regulators, utilities, market participants, and market analysts. On March 20 and 22, 2001, the Subcommittee held two days of hearings entitled "Electricity Markets: California." In addition to further examining the causes of the electricity supply problems experienced by California, witnesses were asked to comment on what California has done and could do to address the problem, and similarly what FERC has done and could do to address the situation. These recommendations resulted in a legislative proposal, The Electric Emergency Act of 2001, two days of legislative hearings in May 2001, and a successful Subcommittee markup.

While the Committee has been very active in conducting proper oversight and holding legislative hearings on Enron and related matters we are also faced with the prospect of legislating in these same areas. As Chairman of the conference on HR 4, the Securing America's Future Energy Act of 2001, I intend to move quickly to prohibit market manipulation by energy companies, provide greater transparency in pricing and enhance criminal authority to prosecute wrongdoers.

On July 25, 2002, Subcommittee Chairman Barton offered, for discussion at the HR 4 conference meeting, a draft legislative proposal which provides for greater market transparency, enhanced criminal penalties and outlawed round trip trading. I am hopeful the Conference Committee can quickly adopt these provisions. As the Conference continues I am certain other items of interest will be raised, debated, and hopefully enacted into law. I have enclosed a copy of Chairman Barton's proposal for your review.

I look forward to working with you as our Committee processes move forward, and sharing with the Congress the results of our investigations at such time and in such manner as befitting an issue of this importance.

Sincerely,



W.J. "Billy" Tauzin
Chairman

WJT/dvm

cc: The Honorable Susan Davis
The Honorable Lynn Woolsey

The Honorable Grace Napolitano
The Honorable Diane E. Watson
The Honorable Zoe Lofgren
The Honorable Sam Farr
The Honorable Brad Sherman
The Honorable Howard L. Berman
The Honorable Lucille Roybal-Allard
The Honorable Mike Thompson
The Honorable Maxine Waters
The Honorable Barbara Lee
The Honorable Joe Baca
The Honorable Juanita Millender-McDonald
The Honorable George Miller
The Honorable Nancy Pelosi
The Honorable Loretta Sanchez
The Honorable Adam Schiff
The Honorable Michael M. Honda
The Honorable Cal Dooley
The Honorable Xavier Becerra
The Honorable Hilda L. Solis
The Honorable Gary A. Condit
The Honorable Tom Lantos
The Honorable Robert T. Matsui
The Honorable Ellen O. Tauscher
The Honorable Jim McDermott
The Honorable Brian Baird
The Honorable Jay Inslee
The Honorable Peter A. DeFazio
The Honorable Pete Fortney Stark

Attachments (3)

If you have any questions, please contact Mr. Mark Paoletta, chief counsel for oversight and investigations, or Mr. Andy Black, policy coordinator, at 225-2927.

Sincerely,



Joe Barton
Chairman
Subcommittee on Energy
and Air Quality



James C. Greenwood
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable W.J. "Billy" Tauzin, Chairman
The Honorable John D. Dingell, Ranking Member
The Honorable Peter Deutsch, Ranking Member
Subcommittee on Oversight and Investigations
The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality

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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

W.J. "BILLY" TAUZIN, LOUISIANA,
CHAIRMAN

May 24, 2002

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RALPH M. HALL, TEXAS
RICK BOUCHER, VIRGINIA
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JANE HARMAN, CALIFORNIA

DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Patrick Wood, III
Chairman
Federal Energy Regulatory Commission
888 First Street, N.W.
Washington, D.C. 20426

Dear Chairman Wood:

We are writing to request that you provide the Committee on Energy and Commerce with specific information regarding the status of Federal Energy Regulatory Commission's (FERC) investigation into electricity markets in California and the West. The FERC began its investigation of Western bulk power markets in July 2000. Since then, in a series of subsequent investigations, findings and orders, the FERC has taken numerous steps and made numerous recommendations attempting to address electricity supply shortages and price volatility in California and the region.

Throughout this time, as you may recall, this Committee has carefully followed the FERC's activities, along with California's attempts to correct its flawed electricity restructuring policies, and the West-wide energy crisis in general. Beginning with a field hearing in San Diego in September 11, 2000, the Subcommittee on Energy and Air Quality (at that time "Energy and Power") conducted numerous hearings to investigate the electric supply and pricing problems occurring in California, culminating in a legislative process and a written admonition by this Committee for the FERC to take all necessary steps to ensure that wholesale power prices are just and reasonable.

In the 107th Congress, the Committee developed an extensive hearing record on the California energy crisis. On February 15, 2001, the Subcommittee held a hearing entitled "Electricity Markets: Lessons Learned From California," in which we heard testimony from California utility regulators, utilities, market participants, and market analysts. On March 20 and 22, 2001, the Subcommittee held two days of hearings entitled "Electricity Markets: California." In addition to further examining the causes of the electricity supply problems experienced by California, witnesses were asked to comment on what California has done and could do to address the problem, and similarly what FERC has done and could do to address the situation. These recommendations resulted in a legislative proposal, The Electric Emergency Act of 2001, two days of legislative hearings in May 2001, and a successful Subcommittee markup. While the bill was never enacted into law, many of the proposals were subsequently adopted by both Federal agencies and the State of California.

The FERC testified at three of the Subcommittee's hearings on the energy crisis in California and the West. Throughout these hearings, the Subcommittee heard numerous allegations and denials of wholesale electricity price manipulation, and numerous allegations and denials of failure of the State and Federal regulatory structures governing electricity markets and expansion of electric power infrastructure. In a letter dated June 12, 2001, Chairman Tauzin and Chairman Barton, along with 13 other House members, expressed strong concern about the threat of price spikes and blackouts that summer, and strongly advised the FERC to take further actions to mitigate wholesale electricity prices and keep power flowing into California. Specifically, the letter called on FERC to create a West-wide price mitigation plan to ensure that all rates for wholesale electricity sales are just and reasonable and, if rates were not just and reasonable, to require refunds and penalties to the full extent allowed by law. Soon thereafter, the FERC expanded its innovative plan for market monitoring and mitigation in California, and opened a formal investigation into real-time wholesale power sales throughout the West.

On February 13, 2002, the FERC initiated yet another fact-finding investigation of potential manipulation of electric and natural gas prices. As part of that investigation, the FERC recently released several documents in its possession describing the questionable trading practices of Enron Corporation.

We are deeply troubled about market manipulation as described in the memos. We ask the FERC to carefully review the impacts upon consumers of practices that created artificial congestion, increased benchmark prices, or exaggerated revenues and trading quantities through mutual "round-trip" transactions.

In light of these recent disclosures, we request that the FERC provide answers to the following questions no later than Friday, June 7, 2002.

(1) Since the FERC issued its December 15, 2000 Order, what specific steps has the FERC taken to investigate wholesale power sales in California and the West?

(2) Summarize the FERC's findings to date resulting from these investigations, including the principal causes of electric power price volatility over the past two years in California and Western Markets and any other contributing factors.

(3) What is the FERC's view of the legality of the practices described in the Enron memos?

(4) Did the trading practices described in the Enron memos violate specific rules of the California Independent System Operator?

(5) When did the FERC become aware of the Enron memoranda?

(6) Was the FERC previously aware of such trading practices by (a) Enron Corporation; or (b) other power sellers (including entities not directly subject to the FERC's jurisdiction)?

(7) What specific steps is the FERC taking to investigate similar trading practices by other power sellers (including non-jurisdictional entities)?

(8) Summarize the preliminary findings of the FERC regarding the February 23, 2002 fact-finding investigation of potential manipulation of electric and natural gas prices.

(9) Does the existence of such trading practices as described in the Enron memos change the earlier conclusions of the FERC regarding the principle causes and contributing factors of high wholesale power prices in California and the West?

(10) Has the FERC undertaken any analysis of the impact of such trading practices on consumer electricity prices? If so, please provide the Committee with your findings, along with the data and information used in the analysis.

(11) Describe the FERC's legal authority to investigate and, if appropriate, regulate such trading practices. Include a description of the FERC's authority with respect to entities not directly subject to the FERC's jurisdiction.

(12) Assess whether the FERC's current legal authority is adequate to address any harms to the public interest related to such trading practices (including with respect to non-jurisdictional entities).

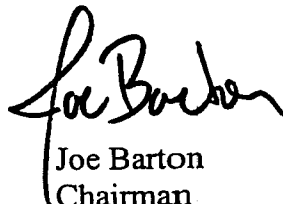
(13) Recently, a California State Senate committee investigating the electricity crisis released the transcript of a conversation on July 3, 2001, between an employee of the California Independent System Operator (CA ISO) and a trader for Enron Corporation. In that conversation, the CA ISO employee requests that the Enron trader place a bid to buy excess standby power at a specific price, reveals bidding information only available to the CA ISO, and attempts to artificially raise the price for excess standby power in the hour-ahead market. Please describe the specific steps the FERC has taken to investigate this incident. Does the FERC have information regarding other incidents in which the CA ISO has attempted to manipulate power prices? Please describe the status of any FERC investigations of the CA ISO and summarize any findings to date resulting from such investigations.

Please provide written responses and all pertinent documents no later than the close of business June 14, 2002. If you have any questions, please contact Jason Bentley, Committee Counsel, at (202) 226-2424. Thank you for your prompt attention to this matter.

Sincerely,



W.J. "Billy" Tauzin
Chairman



Joe Barton
Chairman
Subcommittee on Energy
and Air Quality



Richard Burr
Vice Chairman

cc: The Honorable John D. Dingell, Ranking Member
The Honorable Rick Boucher, Ranking Member, Subcommittee on Energy and Air Quality

[DISCUSSION DRAFT]

JULY 24, 2002

1 SEC ---. PROHIBITION OF ROUND TRIP SALES OF ELECTRIC
2 POWER.

3 (a) PROHIBITION.—Part II of the Federal Power Act
4 is amended by adding the following new section at the end
5 thereof:

6 “SEC. 215. PROHIBITION OF ROUND TRIP SALES OF ELEC-
7 TRIC POWER.

8 “It shall be unlawful for any person or other entity
9 to enter into any contract or other arrangement to pur-
10 chase from, or sell to, any other person or entity electric
11 energy at wholesale and to simultaneously arrange a fi-
12 nancially offsetting trade with such other person or entity,
13 with an intent to deceptively affect reported revenues,
14 trading volumes, or prices.”.

15 (b) JURISDICTION.—(1) Sections 201(b)(2) and
16 201(e) of such Act are each amended by striking “and
17 212” and inserting “212, and 215”.

18 (2) Section 201(f) of such Act is amended by insert-
19 ing “(other than section 215)” after “No provision in this
20 Part”.

1 (c) PENALTIES.—(1) Section 316(c) of such Act is
2 amended by striking “or 214” and inserting “214, or
3 215”.

4 (2) Section 316A of such Act is amended by adding
5 the following after the first sentence: “Any person who
6 enters into any contract or other arrangement in violation
7 of section 215 shall be subject to a civil penalty of not
8 more than \$1,000,000 for each such contract or other ar-
9 rangement.”.

10 **SEC. ---. CRIMINAL AND CIVIL PENALTIES.**

11 (a) CRIMINAL PENALTIES.—Section 316 of the Fed-
12 eral Power Act (16 U.S.C. 825o) is amended—

13 (1) in subsection (a), by striking “\$5,000” and
14 inserting “\$1,000,000”, and by striking “two years”
15 and inserting “five years”;

16 (2) in subsection (b), by striking “\$500” and
17 inserting “\$25,000”; and

18 (3) in subsection (c), by striking “subsection”
19 and inserting “section”.

20 (b) CIVIL PENALTIES.—Subsections (a) and (b) of
21 section 316A of the Federal Power Act (16 U.S.C. 825o-
22 1) are amended by striking “section 211, 212, 213, or
23 214” each place it appears and inserting “part II”.

1 **SEC. ---. MARKET TRANSPARENCY.**

2 Part II of the Federal Power Act is further amended
3 by adding at the end the following:

4 **"SEC. 216. MARKET TRANSPARENCY RULES.**

5 "(a) COMMISSION RULES.—Not later than 180 days
6 after the date of enactment of this section, the Commis-
7 sion shall issue rules establishing an electronic information
8 system to provide information about the availability and
9 price of wholesale electric energy and transmission services
10 to the Commission, State commissions, buyers and sellers
11 of wholesale electric energy, users of transmission services,
12 and the public on a timely basis.

13 "(b) INFORMATION REQUIRED.—The Commission
14 shall require—

15 "(1) each regional transmission organization,
16 independent system operator, or other transmitting
17 utility to provide statistical information about the
18 available capacity and capacity constraints of trans-
19 mission facilities operated by the organization; and

20 "(2) each broker, exchange, or other market-
21 making entity that matches offers to sell and offers
22 to buy wholesale electric energy in interstate com-
23 merce, or, as necessary and appropriate, other sell-
24 ers of electric energy in interstate commerce, to pro-
25 vide statistical information about the amount and

1 sale price of sales of electric energy at wholesale in
2 interstate commerce it transacts.

3 “(c) **TIMELY BASIS.**—The Commission shall require
4 the information required under subsection (b) to be posted
5 on the Internet as soon as practicable and updated as fre-
6 quently as practicable.

7 “(d) **PROTECTION OF SENSITIVE INFORMATION.**—
8 The Commission shall exempt from disclosure commercial,
9 financial, or other information that the Commission, by
10 rule or order, determines to be privileged, confidential, or
11 otherwise sensitive.”.

12 **SEC. --. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

13 (a) **SLAMMING.**—(1) The Federal Trade Commission
14 may promulgate rules in accordance with section 553 of
15 title 5 of the United States Code for the submittal and
16 verification of a retail electric consumer’s selection or
17 change in selection of a retail electric supplier and for the
18 assessment of penalties for violation of these rules.

19 (2) A person shall not submit or change the selection
20 made by a retail electric consumer if prohibited by law
21 or Federal Trade Commission rules established under
22 paragraph (1).

23 (3) It shall be unlawful for any person to change the
24 retail electric supplier without the consent of the retail
25 electric consumer.

1 (b) CRAMMING.—(1) The Federal Trade Commission
2 may promulgate rules in accordance with section 553 of
3 title 5 of the United States Code for obtaining the consent
4 of a retail electric consumer for purchase of goods and
5 services other than those expressly authorized by law or
6 any agreement for the purchase of electric energy or re-
7 lated services entered into by the electric consumer and
8 for the assessment of penalties for violation of these rules.

9 (2) A person shall not charge a retail electric con-
10 sumer for a particular good or service if such submission
11 or charge is prohibited by law or Federal Trade Commis-
12 sion rules established under paragraph (1).

13 (3) It shall be unlawful for any person to charge a
14 retail electric consumer for electric energy or related serv-
15 ices unless expressly authorized by law or by agreement
16 for the purchase of electric energy or related services en-
17 tered into by the electric consumer.

18 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
19 Violation of a rule promulgated under this section shall
20 be treated as a violation of a rule under section 18 of the
21 Federal Trade Commission Act (15 U.S.C. 57a) regarding
22 unfair and deceptive acts or practices. All functions and
23 powers of the Federal Trade Commission under such Act
24 are available to the Federal Trade Commission to enforce

1 compliance with this section notwithstanding any jurisdic-
2 tional limitations in such Act.

3 (d) STATE AUTHORITY.—(1) This section does not
4 preclude a State or State commission from prescribing and
5 enforcing additional laws, regulations, or procedures re-
6 garding the practices which are the subject of this section,
7 so long as such laws, regulations, or procedures are not
8 inconsistent with the provisions of this section or with any
9 rule prescribed by the Federal Trade Commission pursu-
10 ant to it.

11 (2) If the Federal Trade Commission determines that
12 a State's regulations provide equivalent or greater protec-
13 tion than the provisions of this section, such State regula-
14 tions shall apply in that State in lieu of the regulations
15 issued by the Commission under this section.

16 (e) OTHER REMEDIES.—The remedies provided by
17 this section are in addition to any other remedies available
18 by law.

19 (f) ENFORCEMENT BY STATES.—(1) Whenever an at-
20 torney general of any State has reason to believe that the
21 interests of the residents of that State have been or are
22 being threatened or adversely affected because any person
23 has engaged or is engaging in a pattern or practice which
24 violates any rule of the Commission under this section or
25 section 602, the State, as *parens patriae*, may bring a civil

1 action on behalf of its residents in an appropriate district
2 court of the United States to enjoin such violation, to en-
3 force compliance with such rule of the Commission, to ob-
4 tain damages, restitution, or other compensation on behalf
5 of residents of such State, or to obtain such further and
6 other relief as the court may deem appropriate.

7 (2)The State shall serve prior written notice of any
8 civil action under paragraph (1) or paragraph (6)(B) of
9 this subsection upon the Commission and provide the
10 Commission with a copy of its complaint, except that if
11 it is not feasible for the State to provide such prior notice,
12 the State shall serve such notice immediately upon insti-
13 tuting such action. Upon receiving a notice respecting a
14 civil action, the Commission shall have the right—

15 (A) to intervene in such action,

16 (B) upon so intervening, to be heard on all
17 matters arising therein, and

18 (C) to file petitions for appeal.

19 (3) For purposes of bringing any civil action under
20 paragraph (1) of this subsection, nothing in this chapter
21 shall prevent an attorney general from exercising the pow-
22 ers conferred on the attorney general by the laws of such
23 State to conduct investigations or to administer oaths or
24 affirmations or to compel the attendance of witnesses or
25 the production of documentary and other evidence.

1 (4) Whenever a civil action has been instituted by or
2 on behalf of the Commission for violation of any rule pre-
3 scribed under this section or section 602, no State may,
4 during the pendency of such action instituted by or on
5 behalf of the Commission, institute a civil action under
6 paragraph (1) or paragraph (6)(B) of this subsection
7 against any defendant named in the complaint in such ac-
8 tion for violation of any rule as alleged in such complaint.

9 (5) Any civil action brought under paragraph (1) of
10 this subsection in a district court of the United States may
11 be brought in the district in which the defendant is found,
12 is an inhabitant, or transacts business or wherever venue
13 is proper under section 1391 of title 28 of the United
14 States Code. Process in such an action may be served in
15 any district in which the defendant is an inhabitant or
16 in which the defendant may be found.

17 (6)(A) Nothing contained in this subsection shall pro-
18 hibit an authorized State official from proceeding in State
19 court on the basis of an alleged violation of any civil or
20 criminal statute of such State.

21 (B) In addition to actions brought by an attorney
22 general of a State under paragraph (1) of this subsection,
23 such an action may be brought by officers of such State
24 who are authorized by the State to bring actions in such
25 State on behalf of its residents.